

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90013

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JULY 28, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct against a bankruptcy judge in the First Circuit. The complainant alleges that the judge engaged in misconduct while presiding over the complainant's bankruptcy petition. The complainant charges that the judge exhibited "an intense sense of biased [sic] and prejudice against minorities" such as the complainant. The complainant asserts that the judge repeatedly allowed the bank to violate the complainant's rights and that the judge "enjoys to see . . . children and families . . . loose [sic] their homes"

The complainant cites an order issued by the court requiring the complainant to make a payment to the bank, despite the complainant's alleged evidence that the bank had repeatedly violated the bankruptcy code. The complainant adds that, during the relevant hearing, the judge stated that the complainant and family had "been living at the home for a long time without making any payments." The complainant contends that the judge made this statement, although he knew it to be false. The complainant concludes that the judge "regularly enjoys by [sic] siding with the banks to throw children and families to [the] street" and "does not care about [the] consequence[s]

and effects of his brutal rulings and orders . . . "

The complaint is without merit. The complainant essentially presents two claims of bias -- racial bias and partiality for the bank seeking to foreclose on the complainant's home. The complaint, case docket, as well as relevant pleadings and court orders, contain no evidence supporting either of these two claims. The record demonstrates that, during the approximately 18 months that the case was pending, the judge issued numerous orders and held multiple hearings. These include three hearings, each of which addressed the bank's motion for relief from an automatic stay prohibiting the sale of the complainant's property. After each of these hearings, the court continued the matter and authorized the continuation of the stay with certain conditions. The third of these rulings -- the one to which the complainant objects -- required the complainant to submit a "protection payment" within one week's time. Neither this order, nor any other information in the reviewed record, suggest either racial bias or partiality for the creditor. As there is no evidence of differential treatment in the judge's handling of the case -- either on the basis of race or any other factor -- the allegations of bias are dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C).

The remaining charge is that the judge committed misconduct when he erroneously stated, at the relevant hearing, that the complainant had "been living at the home for a long time without making any payments." The complainant contends that the judge knew this statement to be false. As an initial matter, neither the complaint nor the reviewed record contain evidence suggesting that this statement was erroneous. The bank's pleadings and the trustee's report suggest a failure to make payments and the complainant provides no evidence to the contrary. Moreover, there is no

information in the complaint, or in the record, supporting the contention that the judge made this statement knowing it to be inaccurate. An error of fact (or law), without more, is not indicative of bias or other misconduct. "Cognizable misconduct . . . does not include an allegation that . . . calls into question the correctness of judge's ruling" Rules of Judicial Misconduct, Rule 3(h)(3)(A). Thus, on the present facts, the judge's alleged statement that the complainant had failed to make payments does not suggest either bias or other wrongdoing, regardless of whether the statement was factually accurate. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A).

Finally, where, as here, there is no evidence of bias, the claims arising from the complainant's disagreement with any of the court's orders -- including, but not limited to, the order requiring the submission of a "protection payment" -- are dismissed as directly related to the merits of the court's ruling(s). See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rules 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90013 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

7/28/09

Date

Sandra L. Lynch

Chief Judge Lynch